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**Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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In the Matter of)

Revision of Part 22 and Part 90 of the)
Commission's Rules to Facilitate Future)
Development of Paging Systems)

WT Docket No. 96-18

Implementation of Section 309(j))
of the Communications Act --)
Competitive Bidding)

PP Docket No. 93-253

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Comments of AT&T Wireless Services, Inc.

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March 18, 1996

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Comments of AT&T Wireless Services, Inc.

The Messaging Division of AT&T Wireless Services, Inc. ("AT&T") by its attorney hereby files its comments in the above-captioned proceeding.¹ In support of its Comments, AT&T states as follows:

I. Introduction and Summary

AT&T supports the underlying premise of the NPRM, i.e., that geographic licensing for common carrier paging ("CCP") and private carrier paging ("PCP") generally serves the public interest. Allocation of CCP and PCP licenses on a geographic basis will enable licensees to gracefully expand their systems and will also allow licensees to make facilities changes, additions and modifications within their licensed service areas with a minimum of regulatory intervention. The regulatory flexibility afforded by geographic

¹ *In the Matter of Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, Notice of Proposed Rule Making*, WT Docket No. 96-18 and PP Docket No. 93-253, FCC 96-52, ___ FCC Rcd ___ (released February 9, 1996) (hereinafter "NPRM").

licensing will make paging services even more competitive than they are now, all to the ultimate benefit of the public. AT&T believes the MTA is an appropriate geographic area for CCP and PCP licenses since it is an area which roughly approximates the area in which wide area service is provided.

AT&T conditionally supports the use of competitive bidding techniques to allocate geographic paging licenses. In adopting rules for the conduct of auctions for paging channels it is important for the Commission to ensure that eligibility for geographic licenses is not unduly restricted on the one hand and protects the legitimate interests of incumbent operators on the other hand. In order for a short form application for a geographic paging license to be acceptable for filing, applicants should be required to demonstrate they have the possibility to meet the coverage requirements for the paging channel in question through a combination of (1) existing RF coverage; (2) future coverage as a result of an agreement in principle to acquire, merge with or enter into some other assignment or transfer of the facilities of an existing incumbent; and (3) available "white space" in the geographic area for which a license is sought. Adoption of such a rule will ensure that speculators who have no reasonable possibility of meeting the Commission's coverage rules do not cause valuable paging spectrum to lie fallow at the same time that incumbents are prevented from expanding their systems.

Normally, there is no reason to adopt strict build out rules in the context of allocation of licenses through competitive bidding since the price paid for a license will generally ensure that licensees promptly build out their facilities. Here, however, the Commission should adopt stricter coverage rules than originally proposed since it has

tentatively decided to restrict incumbents' ability to expand ongoing operations during the pendency of this proceeding. Two changes to the coverage rules should be adopted. First, geographic area licensees should be required to demonstrate they have constructed and are operating sufficient facilities within one year of initial licensing to serve 1/3 of the population within the geographic license area. Second, the "substantial service" option should be eliminated since the concept is vague. If the "substantial service" option is maintained the Commission, not the geographic licensees, should define how such a standard should be met. Rather than giving a geographic area licensee 5 years within which to make the showing, the rules should require the geographic licensee to advise the FCC how it plans to meet the standard within 1 year after licensing. The geographic licensee should then be required to make the substantial service showing not later than 2 years after initial licensing. Failure to adopt stricter coverage rules than those proposed in the NPRM will create incentives for speculators to effectively prevent incumbents from expanding their systems to meet the legitimate needs of existing subscribers for 5 years or more.

The Commission should auction CCP and PCP frequencies on a channel-by-channel basis. It should also conduct a series of simultaneous multiple round auctions for each frequency band in question (e.g., 929/931 MHz; 454 MHz; 152 MHz etc.).

Incumbents should be permanently grandfathered and should be entitled to protection from interference from geographic area licensees. Interference protection should be based on existing service and interference contours computed in accordance with the rules presently in effect for each paging channel in question. Requiring 931 MHz

CCP licensees to use a new method for determining service and interference contours will pose an enormous burden on all segments of the industry. Incumbent licensees and new geographic licensees will be required to expend substantial resources to compute contours for CCP facilities when contours already exist and area matter of public record.

II. Geographic Licensing

AT&T fully supports the concept of issuing paging licenses on a geographic area basis, especially for 931 MHz CCP and 929 MHz PCP facilities. The paging industry has long supported such a regulatory scheme for the 931 and 929 MHz bands because of the numerous benefits that will result therefrom. Geographic area licensees will generally be able to add, delete or modify facilities within the geographic license area without first having to seek permission from the Commission. The regulatory flexibility afforded geographic area licensees will enable them to react quickly to modify their systems to meet the demands of consumers. Though the paging industry is clearly the most competitive segment of the CMRS industry, geographic area licensing will further increase competition among service providers by eliminating regulatory delay as a factor in facilities-based competition.

Adoption of rules to award paging licenses on a geographic area basis is sound from a legal standpoint. The Commission has already ruled that paging service is a CMRS service.² Based on the mandate of the Omnibus Budget Reconciliation Act of 1993³, the Commission is required to adopt rules which ensure regulatory symmetry between

² *Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services*, GN Docket No. 93-252, Second Report and Order, 9 FCC Rcd 1411 (1994).

³ Omnibus Budget Reconciliation Act of 1993, Publ. L. No. 103-66, Title VI, Section 6002(b), 107 Stat. 312, 392 (1993), codified at 47 U.S.C. Section 332.

comparable services. Accordingly, geographic licensing for paging operators will provide the paging industry with the same benefits afforded to other CMRS services which are or may be competitive with one-way signaling. Included in this group of competitors and potential competitors are cellular, broadband PCS, 800 MHz SMR, 900 MHz SMR and narrowband PCS providers, all of whom are already licensed or in the process of being licensed on a geographic area basis.

III. Size of Geographic Area Licenses

AT&T supports the FCC's tentative conclusion to use the MTA as the size of the geographic area license. AT&T agrees with the Commission that the MTA mirrors the size and development of existing paging systems. In addition, the MTA is small enough to allow numerous providers of paging services to compete for licenses and large enough to enable providers of paging services to aggregate MTAs to provide service to even larger areas to the extent licensees deem that necessary to effectuate their business plans.

IV. Use of Competitive Bidding

AT&T conditionally supports the use of competitive bidding techniques to allocate geographic area licenses for paging facilities. As evidenced by the success of the completed auctions for nationwide narrowband PCS, regional narrowband PCS, A and B block broadband PCS and DBS licenses, competitive bidding techniques have proven to be an efficient method of allocating licenses in a relatively short period of time. There is every reason to believe that the same efficiencies can be realized by applying competitive bidding techniques to the allocation of geographic licenses for the paging industry.

It is necessary, however, for the Commission to craft rules for competitive bidding which (1) protect the legitimate interests of incumbent paging licensees; (2) provide the opportunity for additional service providers to enter the paging market; and (3) prevent speculators from abusing the Commission's processes to the detriment of the public. Rules to safeguard the foregoing goals are especially important in the context of the paging industry in view of the Commission's tentative conclusion to prevent incumbents from expanding their existing, operating systems pending completion of this proceeding. Therefore, AT&T suggests the Commission make the following changes to its proposed auction eligibility and coverage rules.

A. Eligibility

The NPRM does not propose to restrict eligibility for any of the geographic area paging licenses. In most cases, totally open eligibility should be the norm. Eligibility restrictions are necessary in the context of CMRS paging, however, because paging channels are heavily licensed and there is very little white space available for auction. Furthermore, since the Commission has properly made the tentative conclusion that incumbent paging licensees should be fully grandfathered and should not be required to relocate, there is a very real issue of whether non-incumbent bidders for geographic licenses will be able to meet the proposed coverage rules or obtain sufficient spectrum in a given geographic license area to provide a meaningful service to the public. AT&T suggests, therefore, that the Commission establish an eligibility rule which would require prospective bidders to demonstrate in their short form applications that they have a

reasonable possibility of meeting the coverage benchmarks⁴ for the paging channel in question. Only prospective bidders who are able to make this showing should be eligible to participate in the auction for the channel in question.⁵

Because some prospective new applicants may not have existing licensed facilities on which to base such a showing, the demonstration could be based on a combination of the following:

(1) existing RF coverage for the paging channel in question either by the applicant's own licensed facilities or by facilities licensed to any member of a joint bidding arrangement, consortia or other permissible bidding arrangement in which the applicant is a member;

(2) "future" RF coverage for the paging channel in question as a result of an agreement in principle⁶ between an applicant and an incumbent whereby the applicant will acquire, merge or enter into some other assignment or transfer of an incumbent's facilities, and;

(3) available white space for the paging channel in question in the market in question.

B. Coverage Rules

The Commission tentatively proposes to require geographic area licensees to construct sufficient facilities within 3 years and 5 years of initial licensing to provide coverage to one-third and two-thirds of the population of the service area, respectively.

⁴ The proposed build out rules require geographic area licensees to provide service to 1/3 of the population of the area within 3 years of initial licensing and 2/3 of the population of the license area within 5 years of initial licensing. However, as discussed below, AT&T is also suggesting that the first build out benchmark be accelerated to require coverage to 1/3 of the population of the service area within 1 year of initial licensing.

⁵ AT&T has no objection to the Commission adopting other eligibility restrictions such as those which would allow short form applications to be filed only by entities that already provide coverage to 70% of the geographic area in question under the theory that only those parties can realistically be expected to be able to provide meaningful service in the license area in question.

⁶ Documentation would have to be submitted by the short form applicant proving that there was an agreement in principle to effectuate a transfer or assignment of facilities.

The FCC also tentatively concludes that geographic area licensees should be given the option of demonstrating to the Commission that they are providing "substantial service" in the market in question within 5 years of initial licensing. The purpose of the coverage rules is to ensure that licensees do not allow valuable spectrum to lie fallow. Normally strict coverage or build out rules are not necessary for facilities which are obtained as a result of competitive bidding since the price paid for the license is sufficient incentive for a licensee to quickly build out a system. In the context of this NPRM, however, the coverage rules should be modified in two respects.

First, in view of the substantial level of licensing activity which has already taken place in various paging bands, geographic area licensees should be required to demonstrate they have constructed sufficient facilities to provide coverage to one-third of the population within one year of initial licensing rather than the three years proposed by the Commission. Second, the Commission should eliminate the substantial service showing since, among other things, it is a concept which is entirely too vague.⁷

Adoption of the coverage rules described above is necessary to ensure that spectrum does not lay fallow through an extended 3 or 5 year build out period and perhaps for some period beyond that. Though the FCC proposes rules which would automatically cancel a geographic license for failure to meet the coverage requirements, the time it would take to recapture the license and re-auction or re-allocate the spectrum in question would be substantial. In a best case scenario (i.e., one in which the market

⁷ To the extent the Commission chooses to offer the option of meeting the build out rules by demonstrating substantial service, any such demonstration should be required to be met within 2 years after initial licensing rather than 5 years. Also, within 1 year after initial licensing the geographic area licensee should be required to advise the FCC how it intends on making the substantial service showing.

area licensee does not use the "substantial service" showing) the market area license would not automatically expire until 3 years subsequent to the initial license grant. In a worst case situation (i.e., one in which the market area licensee chooses to make a "substantial service" showing) the license would not automatically expire until 5 years subsequent to the initial license grant.⁸ In both cases, after the licenses automatically canceled the Commission would still be faced with the time consuming prospect of re-auctioning or re-allocating the market area license in question.

The most significant adverse impact that will result from the Commission's proposed eligibility and coverage rules is that which will be visited upon innocent members of the public. Because incumbents will not be able to expand their paging systems during this time period, subscribers will not be able to obtain the services they need in a reasonable time frame. This will have long term chilling impact on an otherwise very competitive industry. As a result, it is imperative for the Commission to modify its eligibility rules and coverage rules as stated above.

V. Auction Procedures

AT&T supports the use of channel-by-channel bidding for the paging channels in question. Because paging licensees today apply for facilities on a channel-by-channel basis, it is logical to use the same method in the auction context. Also, the narrowband PCS auctions which have already taken place have been conducted on a channel-by-channel basis. Accordingly, regulatory symmetry dictates that the same method be used for non-PCS narrowband paging channels.

⁸ In fact, in practice these time periods would be longer since there would have to be some submission by a geographic licensee and a subsequent determination by the Commission at the end of the 3 and 5 year submissions that the coverage requirements had not been met.

AT&T also supports the use of the simultaneous multiple round auction for the channels in question. Because there are many paging channels to be auctioned which would make a single simultaneous multiple round auction for all paging channels administratively difficult, the Commission should initiate a series of simultaneous multiple round auctions. Separate simultaneous multiple round auctions should be held for each distinct frequency band, i.e., one auction for 931/929 MHz channels; one for 454 MHz channels; one for 158 MHz channels etc. This will enable bidders to better evaluate the relative worth of channels in a given frequency band.

VI. Interference Standards

Though AT&T fully agrees with the Commission that incumbent paging licensees should be permanently grandfathered and entitled to interference protection from market area licensees, it strenuously objects to the Commission's proposal to change the method by which service and interference contours are computed for 931 MHz facilities.

The resource commitment of the paging industry to recompute contours for thousands and thousands of base station facilities would be enormous. The impact of such a proposal would be great for large companies with internal engineering staffs to undertake the project, but the greatest impact would be on medium and small companies that would have to pay outside engineering consultants to recompute contours for its stations.

In addition, in view of the fact that paging licensees have already established service and interference contours which are a matter of record at the FCC, and operate in accordance with those contours, it would be administratively simpler to use already

established contours rather than new contours. In fact, while the proposed method of determining contours for 931 MHz facilities might arguably be more accurate in terms of gauging the level of interference that might be encountered between co-channel licensees, the confusion resulting from the use of new contours would outweigh any benefit to be derived therefrom.

The problem is further exacerbated by the confusion in the NPRM on how the rule is to be applied in practice. For example, the Commission's proposed method of computing contours severely reduces both the service and interference contours of 931 MHz facilities. If the FCC approves this method of computing contours incumbents could (1) arguably be required to reduce coverage that already exists or (2) be required to accept harmful interference from geographic licensees. In either event, subscribers on incumbents' systems will be unfairly deprived of service to which they have become accustomed and to which they are entitled.

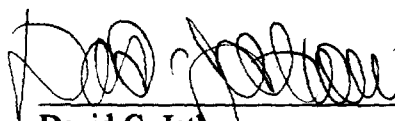
VII. Conclusion

AT&T fully supports the Commission's proposal to award paging licenses on a geographic area basis. However, the Commission must modify its proposals as set forth above in order to adequately balance the right of new entrants to participate in geographic

licensing and the rights of incumbent paging licensees to continue to provide high quality, competitive services to existing subscribers.

Respectfully submitted,

AT&T Wireless Services, Inc.

A handwritten signature in black ink, appearing to read "David C. Jatlow", is written over a horizontal line.

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